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OGC Has Reviewed

Executive

16 November 1949

Office of General Counsel

Request for Storage of Furniture at Government Expense

1. Reference is made to memorandum of 2 November 1949, from the Acting Chief, Division of Finance, to the General Counsel, concerning the request of Mr. [REDACTED] that his furniture be stored at government expense during the period of his overseas duty.

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2. The theory of [REDACTED] request may be stated simply, [REDACTED] is being transferred to [REDACTED], and has been advised by the Chief of Station there that government-furnished quarters have been reserved and will be available to him. It is Mr. [REDACTED] opinion that the occupancy of these quarters is essentially mandatory and that nonoccupancy would result in forfeiture of his quarters allowances. According to Mr. [REDACTED], it would be burdensome to have his household effects transported to [REDACTED] where they would have to be stored at his personal expense, or to keep his personal effects in storage in the United States at his personal expense. Mr. [REDACTED]'s request was originally submitted to the Acting Chief, Division of Finance, without reference to the alleged mandatory conditions at the post of assignment. The claim was properly rejected by that office. The memorandum referred to above raises the question as to whether the Government may pay for the storage of furniture and household effects in the United States during the tour of duty overseas because of conditions which are alleged to be mandatory.

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3. It has been stated that government-furnished quarters have been reserved and would be available to Mr. [REDACTED] upon arrival. Mr. [REDACTED] has adopted the position that occupancy of these quarters is mandatory, leaving him no effective alternative but to occupy the quarters and to leave his household effects in the United States. On the other hand, although there may be an element of Government suggestion or dictation in the selection or occupancy of quarters at the station concerned, it lacks the degree of compulsion characteristic of those areas where, for the good or welfare of the officer or employee, he is required to occupy government-owned or leased quarters. (103.607 (m) FSR Revised). These are factual circumstances which call for appropriate findings by the Administrative Officers involved. The development of these facts is lacking in the record.

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4. Section 103.607 (m) of the Foreign Service Travel Regulations originally provided in part as follows:

"When the authorizing officer shall determine that because of emergency conditions an officer or employee cannot take

SECRET

his effects to, or is unable to use them at, the post to which he is assigned."

There followed three subparagraphs which were concerned with the types of expenses which could be borne by the Department of State under emergency conditions. However, no attempt was made to interpret the term "emergency conditions" in the original regulation. Since the subparagraphs are not pertinent for the purposes of this memorandum they are not quoted.

5. After some experience with the administration of this section the introductory part was amended to read as follows:

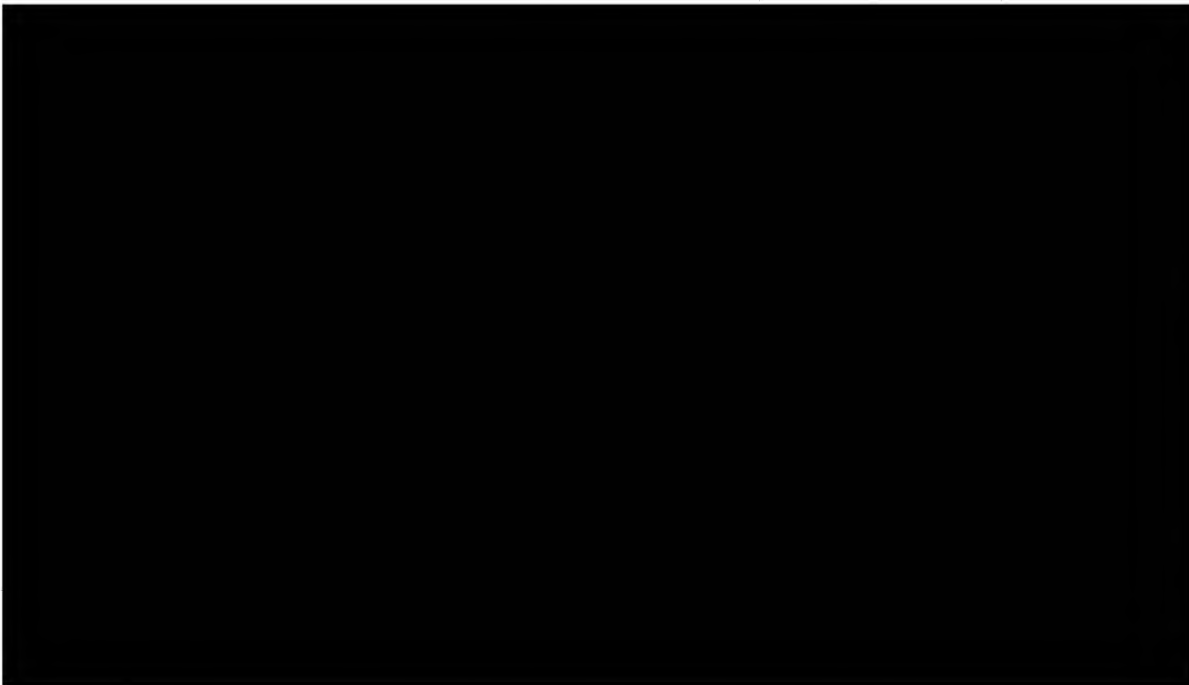
"When authorized or approved by the Chief, Associate Chief, or Assistant Chief of the Division of Foreign Service Administration, the cost of storing the furniture and household and personal effects of officers and employees who, because of emergency conditions, are unable to take their effects to or use them at the post to which they are assigned."

6. The shift in sentence emphasis is noticeable. It is clear that the cost of storing the effects during the period of absence overseas is allocated upon the existence of emergency conditions. In addition, the amendment includes a new subparagraph 2 which defines the types of situations that are within the comprehension of the term "emergency conditions." Included are nonavailability of usual transportation facilities at point of origin, destination or en route; nonavailability of suitable housing conditions at post when emergency condition is sufficiently justified by Officer in Charge; general civil disturbances such as earthquakes, tidal waves, floods, etc., and other "emergency conditions" which may be recognized by the Secretary of State or his designate for that purpose on issuance of a "Certificate of Emergency Condition authorizing storage of effects."

7. This section was discussed with officers of the Department of State who are responsible for its administration. It was admitted that although some of the situations have been defined, the regulations are not without their areas of darkness, as a consequence of which the section concerned has received constant scrutiny. A new revision is in preparation, with its main objective the elimination of the dark areas. However, one aspect of this problem has been recognized, namely, that in and of itself occupancy of government-owned or furnished quarters does not afford a sufficient basis for recognizing the existence of an emergency condition.

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9. Solely as a matter of information, and using the Foreign Service Regulations as a comparative standard, we should like to remark that at the present time the recognition of the present request would involve a realized conception of emergency conditions as noted in this memorandum and as more fully developed in the regulations cited. No conclusion may be drawn at this time as to the extent to which the revision of the Foreign Service Regulations now in preparation by the Department of State may affect the extension of "emergency conditions" under Section 103.607 (a) thereof.

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